

# POLITICS AND THE MORAL LAW

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RUEMELIN

UNIVERSITY OF CALIFORNIA  
AT LOS ANGELES



THE GIFT OF  
MAY TREAT MORRISON  
IN MEMORY OF  
ALEXANDER F MORRISON





## POLITICS AND THE MORAL LAW



# POLITICS AND THE MORAL LAW

BY

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WITH AN INTRODUCTION AND NOTES BY

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## Introduction

IN his characteristically lucid essay on *Treaty Obligations* from which further quotations will be found in the Notes to this volume, John Stuart Mill uses the following language:—

“While it is undoubtedly true that, in the practical application even of the best-established and most universally received rules of morality, in ninety-nine cases out of a hundred an honest man seldom has doubts by which he is to guide his conduct; yet no one, I presume, will deny that there will be even a hundredth case in which different moral obligations conflict. But, though this is not likely to be denied, there exists

The conflict  
of moral  
obligations.

Reluctantly  
recognized.

very generally a cowardly reluctance to look the fact in the face, and make provision for it as one of the unavoidable inconveniences of an imperfect condition. People are afraid lest the force of recognized duties should be weakened, by admitting the liability of one duty to be overruled by another, and, though well knowing that this does happen, and not prepared to deny that it sometimes ought to happen, they prefer to be excused from giving their approbation beforehand to so unpleasant-looking a fact.

“The consequence is, that those who, having the responsibility of action, are forced to make for themselves some path through these moral entanglements,—finding no rules or principles laid down for them but such as ignore,

instead of meeting, the conditions of the case,—decide according to the dictate, either of their selfish interest or of some prevailing sentiment, which, though more disinterested, is not necessarily a truer guide. And since national concerns, by reason of their superior complication, afford by far the greatest number of these disputable questions of obligation, this is one, and not the smallest, among the causes of that laxity of principle, which has almost always prevailed in public matters, even when the moralities of private life have met with a tolerable amount of observance."

The efforts of moralists and of philosophers to remedy the state of affairs so accurately described by Mill, have often been defeated by the fact that their discussions were carried on upon a basis

The difficulty  
of finding a  
remedy.

Inadequacy  
of theoretical  
discussions.

which was either too elaborate or too purely metaphysical. Text-books of ethics are not easy reading at best; and they rarely reach the man of action, or the intelligent observer who is immersed in other affairs,—in other words, the very persons whose actions they are intended to influence or modify.

Nor can this fact be regarded as an unmixed evil. Professional moralists are rarely the safest guides in the solution of concrete problems, and it may be doubted whether the conduct of a single person of strong character and sound intellect has been materially modified by the study of ethical theory. On the contrary, according to the clever observation of Augustine Birrell,<sup>1</sup> “Nothing so much tends to blur moral distinctions,

<sup>1</sup> *Obiter Dicta*, p. III.

and to obliterate plain duties, as the free indulgence of speculative habits."

The dangers of excess are, nevertheless, no valid reason for total abstention, and no apology is needed for a presentation of a subject of perennial interest, combining brevity and clearness as its chief characteristics.

The publication of the address of Chancellor Ruemelin, which is now offered to the English-speaking public, has seemed timely, in view of the problems, especially in international ethics, which are now confronting the peoples of America as well as of Europe, the importance of which can scarcely be exaggerated. The more or less unconscious groping and feeling for external power,—the increased tendency to "expand," both in trade and in "influ-

Timeliness  
of this vol-  
ume in view  
of modern  
problems.

ence," is perhaps the most striking feature of civilized public opinion at the beginning of the new century. It seems to have come as a complete surprise to many leaders of thought, and it is too early to form a clear judgment regarding its causes or its effects.

In his remarkable and classical book, *On Compromise*, written nearly thirty years ago, Mr. John Morley speaks of the generous aspirations which filled the thoughts of intelligent and progressive thinkers about the middle of the nineteenth century, and of the blighting effect of their realization on public enthusiasm and the capacity of feeling it. "Not only have most of [these wishes] now been fulfilled, and so passed from aspiration to actuality, but the results of their fulfilment have been so disap-

The accom-  
plishment of  
political  
aspirations.

pointing as to make us wonder whether it is really worth while to pray, when to have our prayers granted carries the world so very slight a way forward. The Austrian is no longer in Italy; the Pope has ceased to be master in Rome; the patriots of Hungary are now in possession of their rights, and have become friends of their old oppressors; the negro slave has been transformed into an American citizen. . . . The old aspirations have vanished, and no new ones have arisen in their place."

In the United States a similar story might be told, and it constitutes beyond doubt one element out of many in the genesis of the present situation. The generous enthusiasm which shrank from no sacrifice for the preservation of the Union and the emancipation of the slave,

New prob-  
lems in the  
United  
States.

did not and could not long outlast the triumphant accomplishment of those ends. Questions of finance, and revenue legislation for protection or free trade, could not give to public affairs that interest which had existed before the war, and of which the rising generation had heard glowing accounts from the lips of their fathers, and from many of the actors themselves. Nor was the growing coarseness and bitterness of party spirit, and the all-important and incessant struggle for simple honesty and efficiency in local and municipal government, a sufficient content of a well-rounded, vigorous, and inspiring political life, either of the nation or the individual. The desire for greater, higher, and nobler tasks may be useless sentimentalism in some, arrant and

disgusting hypocrisy in others, and the dangers of a resulting indifference to vital domestic problems may be ever so great,—nevertheless, with a very great number of the people it is a true, generous, and high-minded impulse, which must be reckoned with as quite beyond the reach of sneers or denunciation. It has obliterated sectional lines and ignores those of party politics, and it does not, consciously, imply indifference to the nearer and more immediate problems at home. Above all, it is closely and inseparably intertwined with the religious and moral consciousness of the people.

Under such circumstances problems were bound to arise, and they have arisen in abundance, which make a recurrence to first principles imperative. These

Controversies over  
first  
principles.

controversies have thus far generated much more heat than light, and it is with the hope of reversing the proportion, if possible, that the publication of this little work has been undertaken.

Ruemelin's impartiality.

Without indorsing all of the author's views, this address has seemed to the present editor to be, on the whole, as complete and helpful a presentation of a difficult and intricate subject as can well be compressed within limits calculated to attract, not so much the theorist and philosopher, as the busy man of affairs. Written more than twenty-six years ago, before any of the present international problems had arisen, it avoids the imputation of partisanship or controversial tendency, to such an extent that it may, and perhaps will, be quoted on both sides of some of the disputes of the day. That

it is a notable and important contribution to a branch of the science of ethics, of which the literature in the English language is admittedly meagre, will hardly be denied even by those who may hesitate or decline to follow its conclusions. A few words concerning its author may therefore not be inappropriate.

Gustav Ruemelin, the author of this essay, was born March 26, 1815, at Ravensburg, in Würtemberg. He studied theology from 1832 to 1836 in Tübingen, but then turned to teaching, and was appointed rector of the Latin school in Nürtingen in 1845. Being an ardent opponent of the despotism which was oppressing Germany at the time, he took great interest in the popular uprising of 1848, and was

Biographical sketch.

His political foresight.

elected a deputy to the National Assembly at Frankfort. In that body he joined the party which aspired to a German empire, with the exclusion of Austria—the so-called party of Little Germany. He also favored a hereditary dynasty for the German empire. When the parliament elected Frederick William IV. of Prussia to be German emperor, in 1849, Ruemelin was elected a member of the delegation which proceeded to Berlin to offer the imperial crown to the king. The collapse of the entire movement for national unity after the refusal of the king of Prussia to accept the position thus tendered is well known, and Ruemelin resigned from the National Assembly before the latter resolved to adjourn to Stuttgart. He was, however, a member of the

Convention at Gotha a few months later, and greatly deplored the failure of that assemblage to agree upon a practicable programme. In 1849 he was appointed professor at the Gymnasium at Heilbronn, and in 1850 a member of the Educational Council of the kingdom. In 1852 he was attached to the Ministry of Cult and Education, and in 1858 he was made a Councillor of State, as well as chief of the department of ecclesiastic and educational affairs. He resigned in 1862, and devoted himself to literary work, especially in the department of statistics, and his success in this direction led to his appointment as chief of the statistical bureau of the kingdom. In 1867 he was called to the University of Tübingen as Professor of Statistics and His educational career.

of Psychology, and in 1870 was elected Chancellor of the University.

King Frederick of Würtemberg, early in the century, had established a number of prizes for scientific work and achievements on the part of students of the University of Tübingen, which are awarded annually on the 6th of November — the birthday of the king. It is one of the duties of the chancellor to make this distribution, and, on the same occasion, to deliver an address upon any subject of general interest.

The address which is offered in this volume is one of this series, and was delivered on November 6, 1874.

Among other publications of Rue-melin his Shakespeare studies are particularly important. Few scholars have shown a deeper understanding and more

intimate knowledge of the great poet, and an English translation of his work is understood to be in preparation. Ruemelin died October 28, 1889, in Tübingen, and his own life and works quite naturally became the theme of the chancellor's address made a few days later. This memorial oration is included in the third volume of his speeches and essays.<sup>1</sup>

In the notes to the present essay, the editor has sought to increase its usefulness by selecting from the literature on the subject a few of the most striking and modern expressions, and also by giving several comparatively recent instances in which men of high personal character have acted upon the principle object of the notes.

<sup>1</sup> *Reden und Aufsätze.* The address on "Politics and the Moral Law" is to be found in Vol. I, p. 144.

ples herein laid down. All unnecessary comment, or expression of dissent from some of the positions taken, has been avoided; for the notes, as well as the address itself, are offered, not by way of argument, but, according to the French expression, as *mémoirs pour servir.*

The only direct bearing which this little book is intended to have on pending controversies is to help in putting them upon a correct theoretical basis. It can not, and it does not, seek to weaken the position of those who see no reason, in any pending question, for an exception to the admitted and accepted rule of the moral law. The demonstration that such exceptions do and ought to exist, for nations even more than for individuals,

No direct  
reference to  
pending  
questions.

does not necessarily touch concrete problems. Overstatement is the most dangerous foe to sound argument, and he who in the heat of his zeal in favor of a particular course of action insists upon claiming fundamental and universal acceptance for what is more restricted in its application, simply discredits his own deductions. He lays himself open to the most destructive of answers,—the undermining of his major premise,—and this is deplorable on all accounts, more especially when views thus discredited are based upon high and noble ideals.

That Ruemelin's own ideals are of the highest will scarcely be denied even by those who dissent from his conclusions. Practically speaking, the necessary deduction from his reasoning

Ruemelin's  
high ideals.

Importance  
of individual  
character.

serves merely to emphasize the necessity of the highest and truest character in those men who are intrusted with the destiny and policy of a nation. Only they, whose personal sincerity and integrity are beyond all reproach, can hope to be believed when they claim to champion a course, justified only by exceptional rules of morality, as being in the highest and truest interest of their country. The slightest suspicion of sordidness, or of what is perhaps the greatest modern curse of public life, "commercialism in politics," must necessarily vitiate reasoning which might otherwise be conclusive. The advice of a Hamilton to repudiate treaties may be accepted where that of a Burr would be rejected with scorn.

Fortunately the occasions for a resort

to extreme doctrines of national or international ethics bid fair to become less and less numerous, as the ties of commerce, industry, and intellectual intercourse between nations are strengthened. Notwithstanding all apparent discouragement, the Peace Conference at The Hague has accomplished the federation of civilized states for justice among themselves, it has formulated the Magna Charta of International Law, and it has established a permanent International Court, by means of which international law, in the true sense of the word, may hereafter be strengthened and developed. It is a truism that such institutions, whatever their practical value may prove to be, are the result, rather than the cause, of advancing moral sentiment; but that the institution created at The Hague

Signs of  
promise.

will have a beneficent influence upon the relations between politics and the moral law may not only be hoped but expected, even though many disappointments still await the friends of progress in this, as in every other line of human development. At all events it has become easier for responsible statesmen to stand for truth and peace; and the unscrupulous disturber of international relations, whether he be a minister of state, a usurper, or a demagogue, finds obstacles in his way of an increasing degree of gravity. Under these circumstances, the note of despair which may be detected in many critical utterances at the beginning of the new century seems quite unjustified.

Finally, it should be remembered, that the moral currency of a particular people may be debased quite as easily and

as viciously by the exaltation of a false and impossible ideal, howsoever adorned with high-sounding and alluring names, as by the denial of any standard other than the coarsest and most brutal selfishness or greed. In the words of Archbishop Whateley, "It makes all the difference in the world, whether we put truth in the first place or in the second place."

F. W. H.



## The Relation of Politics to the Moral Law

IT is a well-known, and perhaps a fortunate, fact that we are not dependent upon the keenness and clearness of our reasoning faculty alone to teach us what we ought and what we ought not to do. We have an inner guide in those natural impulses which spontaneously cause us to turn in one direction or the other. Though not infallible, these impulses are seldom entirely wrong, and we find that, not infrequently, blind tact gives answer to the most difficult and complicated questions, long before the wisdom of the wise has found a solu- Conscience  
as a guide of  
action.

tion. On the other hand, when we attempt to analyze these impulses, we seem to be in a position similar to that of a sonnambulist who, having walked with a sure step upon dark and dangerous ways, is suddenly awakened, and stops confused and helpless, not knowing how and whence he came. A similar condition confronts us in considering the subject to which I wish to call your attention. Is politics, *i.e.* the untrammelled practice of public affairs, subject to the moral law, or does it follow laws of its own? And, in consequence, are there actions which are permissible in politics, but forbidden by the moral law, and *vice versa*?

Our natural impulses, as manifested in prevailing current opinions, would, with emphasis, unhesitatingly affirm that

The question  
stated.

politics must be subject to the moral law. Yet we must admit, be the contradiction real or only apparent, that there are certain actions permitted by the code of political ethics, but prohibited by the moral law. We praise those who have freed their people from bondage, rescued them from dismemberment, aroused them from impotent lethargy, and raised them to a higher plane of prosperity, power, and liberty. And yet we do not shut our eyes to the fact that these ends may have been accomplished by means utterly inadmissible under other conditions,—by intrigue and force, by blood and iron. On the other hand, we reproach a prince who, though gifted with an acute intellect, noble ambition, and a delicate moral sense, fails to appreciate, and leaves un- Examples of  
seeming con-  
tradiction.

fulfilled, the tasks set before him by his people and his age. When we question our natural impulses, and ask why it is that the absolute obligation of the moral law is affirmed in general, and yet denied in particular instances,—why it is that the maxim, “the end justifies the means,” is abhorred in principle, yet approved and followed in practice, we receive no satisfactory answer. We are compelled to turn to philosophy and books of ethical theory.

Theoretical discussions.

But if we question the theorists, the difficulties will increase instead of diminishing, and we shall be landed in a maze of the most contradictory opinions and interpretations. The alignment of adherence to the different views is quite astonishing. We should expect politicians and constitutional lawyers to take

one view, philosophers and moralists the opposite. We should expect the former to defend the peculiar claims of state-craft, the latter to uphold the absolute supremacy of the moral law. But this is not the case, indeed it is often the very reverse. Frederick the Great, an unex-  
celled master of practical politics, com-  
bated the teachings of Machiavelli with  
the most ardent moral zeal, and main-  
tained that there could be no other  
standard but the moral law. To be  
sure, his book was written while he was  
still crown prince, and the politics of the  
king, although not in line with the prin-  
ciples taught by Machiavelli, followed  
more obscure and more devious paths  
than were dreamed of by the youthful  
author of the Castle of Rheinsberg.  
And yet it is undeniable that posterity,

Frederick  
the Great.

Christian  
Garve.

as well as public opinion during Frederick's lifetime, have evinced less admiration for his books than for his deeds. About the same time Christian Garve, a noble thinker of spotless character, defended, from his study and sick-room, with boldness and penetration, the independent authority of political ethics. He sought his historical illustrations preferably and most frequently in the deeds of his great king. On the other hand, one of the greatest constitutional lawyers of this age,<sup>1</sup> at one time an ornament to our university, recently defended with great positiveness the unqualified subjection of politics to the moral law. We find both views represented also among historians, ancient and modern. Some take delight in accompanying their

<sup>1</sup> Robert von Mohl.

narrative with a steady stream of peevish moral criticism, while others seem often to lose sight of the moral standard altogether, and discover better motives even for the most unjustifiable actions than probably ever occurred to the actors themselves.

It is my purpose to state these questions correctly, to explain and examine more fully the manifestations of our natural moral impulses, and to seek the links which may perhaps establish a connection between their apparent contradictions.

The first steps are not difficult. The universal obligation of the moral law is beyond all question. There can be no individual, no class of free human actions, beyond the scope of the moral law, and still less above its authority.

Universal  
obligation of  
the moral  
law.

All actions  
subject to  
ethical laws.

Conscience, the sense of an absolute obligation, clearly accompanies the will. We cannot conceal anything from its searching light. If, therefore, all political acts are the creation of man, and the result of his free determination, they must become wholly subject to conscience and ethical laws. The statesman is not divisible into two beings, of which one, the layman, would possess a conscience, the other, the politician, none. It is easy to prove, if anything, the very opposite. He who acts for others is placed under stricter obligations than he who acts for himself. It is no reproach to the individual if he neglect his own advantage. As a guardian or trustee of another's property, the same neglect would render him liable to punishment. Upon the decisions of the

leaders of a state depends the welfare of millions; and as their mandate is the highest, so is their moral responsibility the greatest.

This fact renders the politician alone subservient to the moral law as an individual; the same is by no means true of his policy. The very highest sense of moral obligation is enjoined upon the statesman, but the content of his duties is not thereby prescribed. A necessary corollary to this doctrine is another, not so generally recognized and admitted, but quite as unassailable.

Difference  
between the  
politician  
and his  
policy.

We are accustomed to regard the moral law chiefly as the sum total of the doctrines of duty and virtue,—the essential rules in accordance with which the individual should regulate his own inward disposition, as well as his conduct

What is the  
Moral Law?

toward his fellow-men. "Thou shalt love the Lord thy God with all thy heart, and thy neighbor as thyself," is the essence of the moral law of Christianity, in the words of the Master Himself. All systems of philosophy, no matter how they derive and limit the fundamental principles of ethics, do finally in some form or other restrain the natural, egotistical will of the individual, and emphasize his position as an active member of human society. The moral law, in its purest as well as in its more qualified forms, is, for the individual, the law of Love.

The law of  
Love.

Inapplicable  
to the State.

It would, however, be quite as illogical as it is impracticable, to demand from the community itself the same course of action or omission as from its members. The injunctions "Thou

shalt" and "Thou shalt not" of the Decalogue and of legal language have a sanction only when they are imposed by the state as the supreme authority upon the obedience of the individual. The state itself has no parents to honor; it takes no marriage vow which it might violate. The command "Thou shalt not kill" cannot be intended for the power which alone has the duty to punish murder, and which is compelled for self-preservation to raise millions for the purpose of procuring the most effective instruments of death. Likewise the state, in order to accomplish its ends, must sometimes covet houses and fields, oxen and asses, and all that belongs to the individual, without stopping to consult any convenience but its own.

The golden rule.

Moreover, how can the golden rule be applied to the relation of one state to another? None of the ties which bind man to man can join state to state. Although ideal aims and purposes should certainly be considered and cherished by different nations, in reality the latter confront one another, as in the state of nature, *i.e.* as strangers, compelled to be wary and distrustful, like wanderers meeting in a desert; • there is no authority higher than themselves to which they may turn for regulation or judgment. The command, "Love thy neighbor as thyself," cannot be applied here. The state is so far from turning the left cheek to him who strikes the right, that on the contrary, it does and must endeavor to anticipate even a threatened blow with

an energetic counter stroke. A neighboring state may be afflicted and in great distress, caused by natural disturbances, by hostile invasion, or by internal dissensions. The decision of the question whether our own state shall offer assistance, depends, not upon the extent of the neighbor's need, but solely upon the inquiry, whether the rendering of such assistance would or would not be compatible with our own best interests. There may be circumstances giving us cause to rejoice over the weakening of a neighboring state, and impelling us to derive a selfish advantage therefrom, nay, even to strike an aggressive blow.<sup>1</sup> In short, the entire chapter of the duties of love,

The state's  
self-interest.

<sup>1</sup> See Note A, p. 81, on the provocation of war which is regarded as inevitable.

which is the chief doctrine of the moral law, has no application to the conduct of the state. A nation depends, not upon the love of others, but upon the love of self, upon the fostering and development of its own power and prosperity; and if we characterize this by the term "egoism,"—a term indeed that is scarcely applicable,—then egoism certainly is the foundation of all politics.

The state  
and justice.

Having of necessity released the state from all obligations sanctioned by love, it would seem to follow that it is in duty bound to obey the precepts of justice all the more strictly. The state, not being called upon to confer favors, ought assuredly to abstain from all infractions of the rights of others. It should sacredly fulfil its treaties, prom-

ises, and obligations. It ought to regard itself as a part of the universal system of justice, and should act accordingly. Indeed, who would not acknowledge the principle of justice as the highest rule of public life? Righteousness exalteth a nation. Justice is the element in which the state moves; the sense of right is the ultimate source of its existence. The neglect of justice is the undermining of its foundation.

Nevertheless, the relation of the state to justice differs essentially from that of the individual. To the citizen the law is an authority to which he must ever submit. The unchallenged dominion of the idea of law is of much greater importance than the immunity of the individual from suffering or even destruction. In this sense we must

Difference  
between the  
relation of the  
state and of  
the individual  
to justice.

accept the maxim, *fiat justitia, pereat mundus*. The state no doubt is subject to justice in the abstract, which it must recognize and revere as something authoritative; but concrete, particular, and present rights are not necessarily superior to the state. These latter have been inherited or created by the state itself, and they are its own handiwork. Besides, concrete present rights cannot be complete and final, but require, and are ever susceptible of, further development to perfection. The state has the duty to improve that which is imperfect, and replace existing conditions with something better. Such substitution should, of course, be made only in a legal manner. Happy the state whose governmental structure is so

intelligently and fortunately ordered as to admit of imperative changes by a legal method, whose treaties with other states are endurable while they last, and readily subject to peaceable change. But what will be the result when one or the other of these elements is wanting, — when those whose advantages will necessarily be curtailed in consequence of an ever so necessary change have still the right to prevent it? In such a case, is the state to look on in passive resignation while the evils and grievances daily become more threatening and insupportable? Take, for example, the German Confederation, which became unsuited to the requirements of a new generation and to the demands of an increased national feeling. What was to be

The example  
of the Ger-  
man Confed-  
eration.

done, since the treaty of confederation had been made for eternity and was immutable? A unanimous vote was required to make a change, and this could not be obtained, since every conceivable and effective proposal was certain to encroach too much upon the interests of some one of the parties concerned. In addition to the two methods of treating the Gordian knot which presented themselves to Alexander, the scientific and the forcible, a third possibility was open to him: he might have allowed it to remain tied as he found it. Political complications, however, do not permit themselves to be ignored. On the contrary, they imperatively demand a decision, and, whenever the peaceful way is barred, force must be employed, — the end

must be attained, if necessary, by blood and iron. The deep shame and indignation of the injured party at such a technical violation of rights, still more the acute feeling of pain, even on the part of those who profit by the act,—all these manifestations show most conclusively that the state is founded upon the idea of justice, and that it is ever a most deplorable instance of conflicting duties, when the law of political necessity thrusts aside the recognized and ordinary standard of right. Yet, in spite of all regrets, the fact remains.

It is difficult enough, even in ordinary municipal law, to define the terms “necessity” and “self-defence” with exactness, but here at least the imminence of danger at the time fur-

“Necessity”  
and “self-  
defence” of  
a nation.

nishes a definite criterion. The state, however, must not only meet the present but anticipate future danger. Only in rare instances is a nation suddenly confronted with the question of life or death. Most frequently it must face a gradual decay of its powers and loss of its independence, and it is bound to defend and preserve interests, the neglect of which would surely affect its whole future development. An imperative necessity may thus exist in the case of a nation which we should never think of admitting in the case of an individual. A debt-ridden and insolvent state which regards a further increase of the burden of taxation of its subjects to be impossible, cannot, like a bankrupt citizen, assign its property for the benefit of its creditors. It cannot auction

off its fortresses, arsenals, and fleets, its museums and public buildings, not even its forests or railways. Nor can it have itself committed to the poor-house, or have its sovereign powers impaired. It must rather resort to self-help, and reduce the demands upon it in proportion to its ability to respond, and the complicated interests involved in such a proceeding will scarcely ever permit of a decision wholly free from doubt.

Let us take another example. At the beginning of the nineteenth century, the South German states, after having fought for ten years for their emperor and their country, and having, since the separate peace of Napoleon with Prussia, seen their lands become the sole theatre of war,—at

Example of  
the South  
German  
states in their  
relations with  
Napoleon.

the mercy of friend and enemy,— took the field in this predicament on the side of their conquering foe, who gave them the choice only between alliance and destruction. Eight years later, when the lucky star of the modern Attila had dimmed, they not only forsook him, but carried over to the new alliance with their countrymen all the gains which they had acquired through the old. This conduct, indeed, can be called neither noble nor magnanimous. Historians will not praise it, poets cannot glorify it,— but nobility and magnanimity are not predicates which statescraft can court most successfully. Notwithstanding all criticisms, the conduct of these states was right, and in accordance with their duty; unable to offer resistance, they were driven to

this course by necessity. These princes and their advisers would have assumed a much more serious moral responsibility had they exposed their lands to devastation and their states to dismemberment or destruction, merely in order to experience for themselves the exalted sense of chivalrous fidelity and steadfastness.

An unqualified obligation on the part of a state to observe treaties made or recognized by it cannot be maintained.<sup>1</sup> No one can deny that, in not a few instances, the distribution of territory created by existing European treaties represents merely a prescriptive title, based upon acquisitions which were originally unjust, if, indeed, they were not the result of sheer robbery,—rights that will never

Treaty obligations.

<sup>1</sup> See Note B, p. 92, on Treaties and Promises.

National

titles by

prescriptions.

Turkey.

be admitted by the losers. The ordinary conception of title by prescription has no pertinence whatever in the life of peoples and of states. There are infractions of the law which become prescriptive almost immediately, others never do. The fact that the most beautiful lands on earth, the cradle of the Christian faith, and the original mother-land of a noble type of humanity, should be held in subjugation by a barbarian horde, withering the very grass beneath their horses' hoofs,—that ten million free-born Christians should become *rajahs* shorn of their rights, and subjected to the avarice and arrogance of Turkish pachas,—all this cannot, even after the lapse of four centuries, and in spite of manifold treaties and pledges on the part of the powers be justly regarded

as anything less than a brutal outrage, and it will continue to be so regarded until the day of judgment. On the other hand, not only the fact that both in and out of Germany spiritual sovereignties have been abolished, but also the manner in which this was accomplished, constituted a manifest infraction of technical rights, upon which the statute of limitations had run before the ink had dried on the decrees.

Spiritual  
sovereign-  
ties.

Assuredly there is a law of reason beside the written law, a law of the future as well as of the past, however dangerous these maxims may sound. It is the task of politics in the highest sense of the term to transform the law of tradition into the law of reason, within the limits of respect for acquired rights if possible, but, if not, then outside of those limits.

The true task  
of politics  
in the higher  
sense.

We have thus arrived at the same conclusion with regard to duties prescribed by justice, as to those prescribed by love. Politics, as all human action, is subject to the authority of moral duty, but the moral law which prescribes virtues and duties for the individual is not available in the conduct of public affairs. This phase of ethical law is essentially foreign to politics. Altruism is the gospel of the citizen, self-preservation that of the state. The individual subserves the law; the state creates, moulds, and directs it. The individual is but a transient member of the ethical organism; the state, if it be not itself this organism, is at least its real directing force. The state is unending and sufficient unto itself. Regarded exclusively in this light, our first question

—Is politics subject to the moral law of private life?—must be answered in the negative; the second—Does politics possess an independent principle for the guidance of its actions?—in the affirmative. These answers merely reaffirm the truth of the old maxim, *salus publica suprema lex esto*; all other considerations are subordinate to the preservation and well-being of the community.

Having thus completely severed politics from private morality, the question now arises, Have we not thereby lost our moral foothold, and are we not standing on an inclined plane, from which we must inevitably plunge over the precipice into the depths of Machiavelli's infamous doctrine, that for political ends even crime is a justifiable means? Our subject can scarcely be

The immoral  
principles of  
Machiavelli.

## 50 THE RELATION OF POLITICS

discussed without a reference, however brief and incidental, to this doctrine of Machiavelli.

Attempts  
to excuse  
Machiavelli.

The world is ordinarily accused of a fondness for blackening even that which is brightest. Many modern authors, however, more particularly perhaps the Germans, display the opposite tendency, by throwing so favorable a light upon historical personages with besmirched or branded characters, that their very vices appear as virtues. Thus it has been long customary, following the example set by a few great authorities, to stamp the author of *The Prince* as a national patriot, seeking only the salvation of Italy, and bold enough in her desperate condition to prescribe poison. His brilliant closing chapter on the liberation of Italy might

indeed justify such an assumption, but only if we regard it apart and base our judgment upon it alone. I cannot, however, convince myself that the thought of the unity and freedom of Italy was really the guiding star of Machiavelli's life and writings. To me <sup>Their futility.</sup> those paragraphs appear to be merely rhetorical ornaments — a beautiful and effective closing of a work which is most objectionable in many other particulars. Machiavelli was too clever a politician and judge of human nature to seriously suggest to the young Medicum, for whom his book was written, or to the Florentine government, the expulsion of the Spanish and French armies from Italy. On the other hand, it would naturally have a psychological effect, and further the personal aims of

Dangers of  
his doctrines.

the book, if such a possibility was made to appear to the young man in a brilliant and alluring light. For this is a fundamental defect in all our political theorizing: we do not readily concern ourselves with ideal aims, with the worth and happiness of mankind, and with the moral purposes of the state; but everything has a tendency to resolve itself into the question, How can ascendency in the state be gained by a party or by an individual,— how can that be maintained which has been achieved, or how can opponents be rendered harmless? The fault of Machiavelli's book is that such questions are spoken of as though they were simple matters of calculation, such as the siege of a fortress or a problem in chess. Avarice and ambition belong

to the domain of private morals, not to politics, which concerns itself with the welfare of the state. With all due admiration for the clear and keen thinker and the classical writer, we must stigmatize the teachings of Machiavelli as infamous, and his own character as impure. To glorify the deeds of a Cesare Borgia not, indeed, by ignoring his atrocities, but for the reason that he showed no hesitancy in perpetrating them,—such glorification is itself atrocious, it is treason against all man's moral ideas, which should repudiate every attempt at palliation.

The proposition that the state, the keystone of all moral order, cannot be governed in accordance with the same rules of the moral law which are applied to each individual citizen, is something

Fundamental  
difference  
between the  
author and  
Machiavelli.

very different from the doctrine that crime may be resorted to in order to attain or to keep ascendancy in the state.

The so-called  
Jesuit law  
of morality.

It is apparently a long step, but in reality a very short one, from the doctrine of Machiavelli to the so-called Jesuit law of morality. According to the latter the end justifies the means, and an action otherwise and inherently reprehensible is justifiable, provided it serves a higher purpose, "the glorification of Almighty God," *in majorem Dei gloriam*. The difference between the two appears to be great, because here at least higher aims are introduced, and it would be idle to dispute the principle that the lower must ever be subordinated to the higher. This distinction, however, shrinks almost to the vanishing

point when we consider that the alleged higher aim is in truth nothing whatever but human authority, not indeed political, but hierarchical. A real kingdom of God upon earth, in the light of Christian faith, a true "Society of Jesus," could only be a kingdom of truth, of love, and of justice; and the idea that falsehood and crime could possibly be factors in its creation and expansion is too preposterous to be seriously maintained. If, however, we are to substitute the church for religion, and, for the church, a hierarchical organization with concentrated authority, determined to rival the state in real power, and in the end to dislodge and supplant it, then indeed we may reasonably turn to Machiavelli for advice. In the creation of such an unnatural and self-contradictory *imperium in imperio*, the

Florentine grand master's precepts as to the means by which authority over men is most surely established and maintained become invaluable. But, in that case, it would seem advisable, for appearance sake, occasionally to employ pious phrases and specious sophistries, in order to disguise or embellish statements which the master himself has expressed in plain and unadorned terms,—a manifestation of honesty for which he assuredly deserves due credit.

Subordina-  
tion of lower  
to higher  
aims.

Undoubtedly there is a grain of truth in the doctrine that the more insignificant objects and aims of human aspirations must be sacrificed and subordinated to the more important. This is the correct interpretation of the maxim that the end justifies the means. Without this principle we cannot, in-

deed, predicate the existence of the moral law, for the distinction between the lower and the higher impulses and aims of human nature is the only possible basis for all systems of ethics. Every man has within himself a standard by which to measure the value of human actions and qualities, and without it there would seem to be no method of connecting the idea of a particular "good" with that of goodness in general. We are compelled to carry this distinction even into the realms of metaphysics. All efforts "to justify the ways of God to man," to reconcile the existence of evil with that of an all-powerful and benevolent Creator, are based upon this distinction, which is applied to the thoughts of the Creator when the poet says of Him:—

Importance  
of this dis-  
tinction.

“Der Freiheit  
Entzückende Erscheinung nicht zu stören,  
Lässt er der Übel grauenvolle Schaar  
In seinem Weltall toben.”<sup>1</sup>

This principle the  
essence of  
politics in  
the higher  
sense.

It is scarcely an exaggeration to say that politics, in the higher sense of the word, consists almost entirely in the constant application and development of this very principle. The interests of an individual or of a minority are always to be subordinated to that of a majority or of the community at large. Individual liberty is limited by the demands of the commonwealth, but the possibility of abuses in individual cases does not justify despotic prohibitions. The moral ideals of a people must, above all, be guarded and esteemed. Better that

<sup>1</sup> “In order that Freedom’s enchanting appearance may not be disturbed, He permits the frightful horde of evils to rage in His universe.”

material injury should result in applying the law to a particular case, than that the idea of law itself should be regarded with indifference or contempt; and yet great and general interests must not be sacrificed to the mere letter of the law. The interests of a foreign state can be regarded only in so far as they do not conflict with our own. In politics, at least, the preservation of the state justifies every sacrifice, and is superior to every commandment.

Whenever the statesman is called upon to make a decision, these or similar questions confront him. He is compelled to choose between different existing possibilities, and it is his duty to prefer the lesser evil to the greater, the larger good to the smaller.

A complete theory of political duty,

*The duty of  
the states-  
man.*

a science, as it were, of state morality or political ethics, would require a thorough consideration and a scientific establishment of these principles. It would constitute, so to speak, a comparative appraisal of human possessions and purposes, measured with reference to their importance to the common welfare,—a political doctrine of property rights, to which there would have to be added the corresponding doctrines of duties and virtues. The ideal of a morally pure community would complement that of a morally pure human soul, as foreshadowed in the moral law.

It is doubtless apparent, that the separation of politics from the moral law, and the ascription to it of its own principles of duty, does not necessarily imply that politics must fall altogether

without the sphere of moral ideas, or come into conflict with justice and thus become positively immoral. Politics and morality, as this latter expression is commonly used, hold coördinate positions, both being included in the higher conception of ethics, or the moral law in a wider sense.

Do we not often throw unnecessary obstacles in our own way by exaggerating the differences between ideas as expressed in words, and losing sight completely of the flexible and changing character of the actual phenomena, for which these words are intended to be mere symbols? Politics, justice, and morality, which we are so fond of differentiating widely and sharply, are but the closely interwoven branches of a common stem. Their common basis -

Danger of  
hair-splitting  
metaphysics.

is the regulation of human impulses and actions, according to an inner standard of their different values. It is the business of politics partly to preserve, partly to develop, the law as actually established. Law is that part of the good which is, or appears to be, capable of being formulated into a universally valid and effective rule of human action and intercourse. Finally the supreme good is nothing more or less than that which is truly expedient and in accordance with reason,— that which produces true and universal human happiness, advancing humanity, and developing its noblest and highest powers. And thus the idea of goodness completes the circle, and comes back to the real task of politics.

All of these ideas are by no means complete and final in themselves. They have been placed in the living flood of history, and continually act and react upon one another by intimate contact. We have in our conscience, to begin with, the sense of an unconditional moral obligation, a belief in the existence of a duty, valuable and good in itself. Yet the conscience has no direct knowledge of what this goodness really is, and how it manifests itself in particular instances. This knowledge the individual must derive from history, looking to the stage of the development of the age and the people to which he belongs. Form and substance are, thus, for the individual, united in an inseparable whole, and the command assumes in his eyes the aspect of a rule imposed by a higher or Divine

The real  
sanction of  
the Moral  
Law.

authority. "Thou shalt honor thy father and thy mother," "Thou shalt not kill," "Thou shalt not steal," "Thou shalt not commit adultery," — these commandments we are to obey, not because Jehovah proclaimed them amid lightning and thunder from a pillar of cloud on Mt. Sinai, nor because He wrote them with His own hand on tablets of stone, but, on the contrary, it is because we recognize in these commandments the earliest and most enduring basic principles of human society, — the beginnings of every moral rule of peace and justice, — that we endue them with Divine sanction, by means of a feeling which is deeper by far than a mere acceptance of traditional views. In the course of history the content of the idea of goodness acquires depth and firmness.

Law may be compared to the great dikes, which transform lands wrested from the sea, or exposed to its floods, into a firm and lasting possession. Political science builds, protects, and widens these erections. The principal labor, however, of acquiring the land and cultivating it, falls upon the individual,—upon those individual moral forces, which from their own achievements have gained practice and training, and an incentive for further acquisition. Therefore politics, law, and morality serve but one purpose, the progress of mankind.

The objection may be raised that this view exalts politics to an ideal height, and apparently evades rather than solves the practical difficulties and questions which present themselves in a discuss- Possible conflicts of duty.

sion of the relation of politics to the moral law. The claim may be made that the main question at issue is, whether or not it is justifiable to commit, in the interests of the public weal, actions which are unconditionally forbidden by law and morality. We must admit that such conflicts are not only possible, but of frequent occurrence, and that every theoretical discussion must squarely meet this problem.

Political  
motives  
no defence.

The question whether criminal acts can be justified by claiming that they were committed from purely political motives may be answered by a simple reference to the penal law. The defence of political propriety or necessity has never been classed with that of self-defence or irresponsibility as excluding, if established, all liability to punishment.

In meting out punishment, therefore, the judge might take this motive into consideration only in the same way as he would consider other special circumstances. Quite different, also, in its <sup>Self-sacrifice  
in defiance  
of law.</sup> bearings is the case where a person, well knowing that he is transgressing the law, and ready and willing to pay the penalty, yet feels in duty bound to sacrifice himself for the public welfare. In such a case our sense of justice will not venture to judge on general principles, but only after due consideration of all the special circumstances of the individual case. Our moral judgment will not deny full recognition to the brave and perilous decision of General York; it will not fail to draw a distinction between the deed of a Stafp or a Charlotte Corday and that of a Sand or

a Blind; it will employ different standards in judging the fratricide of Timoleon, Cicero's violation of the law as consul, and the deeds of a Brutus or Harmodius and Aristogiton. In such cases the question involved is not only as to the intentions of the hero, but as to all the facts of the case.

Judgment  
and wisdom  
are moral  
qualifica-  
tions for a  
statesman.

In political actions of an extraordinary character, where the man of the occasion must be a volunteer, judgment and wisdom are a bounden duty, and stupidity appears as an unpardonable crime. For the politician, wisdom is not only an intellectual but also a moral qualification, and he who is lacking in wisdom, or is not aware of his deficiency, commits a sin by the very act of aspiring to a vocation for which he is unfitted, and in which he is called upon to consider other interests than his own.

Falsehood in  
political  
actions.

The penal code, to be sure, disregards many acts which must nevertheless be considered immoral. Chief among these is falsehood, which in accordance with long-established tradition we are accustomed to regard as almost indispensable to the politician and the diplomat. What attitude should politics take toward falsehood? We reply, that political activity is connected with a public office, obtained by inheritance or appointment, but no office or relation of service can authorize or compel the commission of dishonorable and morally unlawful acts. Furthermore, there is nothing which can be found,—either in the inner life of a state or in its peaceful intercourse with other nations,—which really necessitates a departure from the ways of common frankness and truth.

Exceptional  
cases.

Actual or threatened war, however, is a condition of distress, and the methods to be employed at such a time are limited only by international law and the considerations of natural humanity. To add to these the demands of generosity and the chivalrous morality of romance is inexpedient, and incompatible with the function of one called upon to act, not for himself, but for others, in fact, for all. A man should be magnanimous and generous only at his own expense, not at the expense of others. Wherever force is permissible strategy cannot be debarred. Where it is allowable to take life, it cannot be improper merely to deceive, and in case the same result could be obtained by either method, deception is preferable, as being the more humane and indulgent.

To follow this subject further would soon involve us in a maze of refined casuistry, such as may be found in textbooks on ethics, in the discussion of the propriety of "white lies," and of the problem whether a shipwrecked mariner clinging to a spar capable of supporting only one is justified in preventing another from laying hold of it. A famous jurist holds that it is perfectly proper to accept the benefits of voluntary treason, or to obtain support for a good cause by corruption; yet even he declares the bribery of foreign officials for the purpose of obtaining their traitorous services to be unpardonable. There is much to be said on both sides of such questions. Assuming that we are dealing with a state of hostility and not with ordinary peaceful intercourse

Questions of  
casuistry.

Misplaced  
moral sensi-  
tiveness.

of nations, my own moral feeling would neither demand nor countenance so sharp a distinction. A general who, in besieging a fortress, would be justified in accordance with his duty in employing even the most terrible implements of destruction, and in sacrificing much property and many human lives, and who rejected the opportunity to open the gates with a golden key, would be satisfying his sensitive conscience only at the cost of others, against the health and lives of thousands of his own countrymen, as well as those of the enemy. It would be folly in war for one of the combatants to renounce the right to make use of spies among the subjects of the hostile state by means of corruption. The conditions in which the higher interests of a state or a

nation are at stake transcend ordinary rules and principles, and they upon whom supreme responsibility rests can hardly afford to be impeded by the threads of casuistry.

On the other hand, the fact is that the historical development of politics and of the moral law shows a continual mutual *rapprochement*; in other words, there is at least an ever present tendency to introduce more and more of the moral law into politics; and this fact shows most conclusively that both, however far apart their separate course lies, spring from a common source, and finally reach a common destination. In the Christian philosophy of the Middle Ages all moral ideals were monopolized by the church. The state was regarded as branded with worldliness, and, consequently, on a

Politics and  
the Moral  
Law are be-  
coming more  
closely  
related.

lower plane, and it justified this view to a considerable degree. Its function was not so much the recognition of rights and duties as the imposition of burdens and demands. Even modern philosophy has found great difficulty in defining the true idea of the state: it was regarded simply as an insurance company, underwriting individual rights, and disregarding morality almost entirely. It is the enduring and glorious merit of Hegel, and perhaps his greatest service to the science of thought, that he recognized in the state at once the objective realization of moral ideas and their noblest manifestation,—that he introduced into the science of ethics a discussion of the relation of the individual to the state. But, reasoning from entirely different premises, noted works of Christian ethics

Hegel's  
theory of the  
state.

have come to the same conclusion, and have made the state, rather than the church, the organ for the fulfilment of the moral ideals of mankind.

On the other hand, we can hardly fail to notice in the management of public affairs an increasing tendency toward nobler ends. In the eighteenth century politics consisted mainly of cabinet intrigues, mutual espionage and plotting, the corruption of valets and court ladies; all these were important functions of a diplomat. To grab and traffic in territory, to quarrel about rank and power, seemed to be the content of diplomatic science; the only regard paid to the welfare of the people was in the choice of language and in the multiplication of meaningless phrases. It is one of the blessings of modern

Noble ends  
of statesman-  
ship.

free institutions, that the fate of nations is no longer discussed and decided exclusively in the cabinets and ante-chambers of princes, but in the public deliberations of the representatives of the people. Plans that shun the light of publicity have become, not indeed impossible, but decidedly more difficult of execution. Since two of the great civilized nations of Europe have passed from a condition of wretched dismemberment to that of national unity, the true and natural boundaries of the European family of nations have been found and established in their essential outlines. Universal military service renders wars impossible which are not recognized by the people themselves as just and inevitable.<sup>1</sup> Wars themselves are of shorter

<sup>1</sup> See Note C, p. 123, on War.

duration and more humane in conduct. The humanizing of war. The most recent progress in humane methods of warfare has emanated from the very state which, not more than one hundred years ago, caused its own soldiers to be thrown alive into a moat, in order that the storming party might pass over their bodies as over a bridge.

History has given to the German people, now powerful enough not to covet the property of its neighbors, and yet able to maintain its own possessions against all the world, the mission of founding an empire of peace in the centre of the European continent,—a state whose politics should seek simply to promote prosperity, liberty, and civilization. We have been fortunate enough to behold and enjoy the fruition of a policy which need not

Responsibility of the German empire.

shrink from comparison with the highest standards of history. For the second time in the course of the century, out of the distress and confusion of the moment, there has arisen unto us a man,— the embodiment of justice and power.

*Conclusion.*

But the fundamental basis of international ethics is the moral sense of the peoples themselves. If the German people shall maintain the preponderance of its love of ideals over the mere lust for gain and enjoyment, over indifference to the common welfare, and over narrow prejudice,— only in that case can the politics of the empire, henceforth based on universal suffrage, be administered in a similar spirit. The morality of a people and that of its statesmen go hand in hand.

Only by accident will the standard of morality in the government of a free people be higher than that of the governed. And only in the ever continuing process of action and reaction between both may be found the ultimate solution of the problem discussed in this address.





## Notes

### NOTE A. THE PROVOCATION OF WAR WHICH IS REGARDED AS INEVITABLE

Perhaps the most striking instance of this view, both with respect to its unequivocal nature and its far-reaching effect, is to be found in the policy of Prussia, under the guidance of Prince Bismarck, in the events which led up to the wars of 1866 against Austria and the South German states, and 1870 against France.

In the former instance the necessity of putting an end to an admittedly intolerable situation, and the subsequent preparatory steps toward the unification of the German people, have long since been well-nigh universally accepted as an abundant justification of the aggressive warfare, which, at the time, seemed the height of recklessness.

The story that *unprovoked* aggression on the part of France led to the war of 1870

has been put into a new light by the publication of the memoirs of the king of Rumania, corroborated as they are on all essential points by Prince Bismarck's own autobiographical notes.

Bismarck knew, in May, 1869, from Count Benedetti, the French Ambassador at Berlin, that France did not favor the candidacy of Prince Leopold of Hohenzollern (a son of Prince Karl Anton, and a brother of King Charles of Rumania) for the then vacant throne of Spain.<sup>1</sup> Nevertheless, he "pushed ahead the Hohenzollern prince with all the force and weight [*wucht*] of his will."<sup>2</sup> The evidence in support of this statement of the principal biographer of William I is overwhelming, and is to be found in the second volume of the memoirs of the king of Rumania.<sup>3</sup> "Count Bismarck is pleading with great warmth for the acceptance of the throne by the hereditary prince: in a

<sup>1</sup> Benedetti, *Studies in Diplomacy*, pp. xxxvi-xxxvii; Erich Marcks, *Kaiser Wilhelm*, I, p. 270.

<sup>2</sup> Marcks, *ibid.*

<sup>3</sup> *Aus dem Leben König Karls von Rumänien, Aufzeichnungen eines Augenzeugen*, Stuttgart, 1897.

memorial to King William he emphasizes the great importance, which the calling of a prince of Hohenzollern to the Spanish throne would have for Germany: it would be of incalculable political value to have a friendly country in the rear of France. . . .”<sup>1</sup> On March 20, 1870, Prince Karl Anton, who had gone to Berlin with his son Leopold for the purpose of discussing this question with the king, writes to his son in Rumania as follows: <sup>2</sup>—

“On the fifteenth there was a very important and interesting consultation here, under the presidency of the king, and at which the crown prince, both of us, Bismarck, Roon, Moltke, Schleinitz, Thile, and Delbrück were present. The unanimous decision of these advisers was in favor of acceptance, as the patriotic duty of a Prussian. For many reasons, and only after a severe struggle, Leopold has declined. Inasmuch, however, as the desire in Spain is *avant tout* for a Catholic Hohenzollern, I have suggested Fritz [a younger brother of both Leopold

<sup>1</sup> Vol. II, p. 68.

<sup>2</sup> *Ibid.*, p. 72.

and Charles of Rumania], in case he should consent."

Prince Frederick declined peremptorily, and two weeks later Prince Charles of Rumania makes the entry in his diary, April 3,<sup>1</sup> that he had heard from Berlin that "Count Bismarck has repeatedly and most decisively declared that the acceptance of the Spanish crown by one of the princes of Hohenzollern was a political necessity." On the same day the fact is noted that Lothar Bucher, known as "the right hand of Bismarck," and Major von Versen of the Prussian General Staff, had been sent to Spain on a confidential mission "to study the situation." On their return,<sup>2</sup> they gave a glowing account of their reception and "very satisfactory reports regarding the prospects [*Aussichten*] of the Hohenzollern candidacy," so that King William remarked that their warm welcome must have given a roseate hue to their observations.<sup>3</sup> On the same day Prince Karl Anton notes that Bismarck had been "greatly dissatisfied by the appar-

<sup>1</sup> *Ibid.*, p. 75.    <sup>2</sup> June 2, *ibid.*, p. 93.    <sup>3</sup> *Ibid.*

ent failure of the Spanish combination," and that, on learning that Prince Leopold seemed inclined once more to accept, he wrote to the father, urging him to use his influence immediately with the hereditary prince, to disregard all objections, and to accept the crown "in the interest of Germany."

Soon afterward the negotiations came to the knowledge of the French Cabinet, with the well-known result.

Prince Bismarck's own version of the story, written more than twenty years later, in his extreme old age, differs somewhat from the above account. He says in his memoirs:<sup>1</sup> "Politically I regarded the question [of the candidacy of the prince] with considerable indifference. Prince Karl Anton was more inclined than I to help in a peaceable manner to bring about a favorable solution. The memoirs of his Majesty the king of Rumania are not accurately informed regarding the ministerial attitude on this question. The council of ministers in the palace, which is there mentioned, did not take place. Prince

<sup>1</sup> *Gedanken und Erinnerungen*, Vol. II, pp. 80-81.

Anton lived in the palace as the guest of the king, and he had invited the latter and some of the ministers to dinner. I hardly believe that the Spanish question was considered at the table."

A reference to the text of the letter of Prince Karl Anton to his son, as given above, will show that he nowhere mentions a "council of ministers" as having taken place. He calls it a "consultation," and gives the names of those present, as well as a summary of the conclusions arrived at with unanimity. Written five days after the alleged occurrence, with no possible motive for deception, and scarcely a possibility of gross inaccuracy, this letter must be accepted as superior evidence to Prince Bismarck's ineffectual and rather feeble denial, and the most charitable assumption remains in favor of a forgetfulness on the part of the aged statesman, who was evidently striving to put his actions at the time into a favorable light. He indeed admits that he did consider the candidacy "*opportune*," and does not deny having called it "*une excellente chose*," though

he doubts whether he used that form of words.

Marcks, whose biography of William I is generally accepted as the best and most authoritative work on the subject, asks the question, "What was Bismarck's object?"<sup>1</sup>

"Did he wish to provoke the French to war,—to a hasty attack,—perhaps because he knew how soon they might strike on their own account, and how actively they were seeking help against Germany? This is not the occasion to discuss these possibilities in detail: with our incomplete knowledge, and in view of the delicate nature of the questions involved, the most contradictory deductions may be made with equal plausibility. . . . That he acted, and wanted to act, toward France without any consideration whatever, seems undeniable: French diplomacy was to have been taken entirely unawares by the election. . . . Did he believe that he had the means . . . to justify his action before South Germany and Europe . . . so that he would seem not to have in-

<sup>1</sup> *Ibid.*, p. 81.

tended, or perhaps even expected, the war, but that he would have accepted it in a favorable diplomatic position and without regret? . . . Whatever may be the case, and whatever unknown element may be concealed behind these problems, one thing is certain, and that is that Bismarck acted in the question of the Spanish throne with full force, and it is equally certain that he was right in any case to act with decision. . . . There is no doubt that in the relations between France and Germany, France was the aggressor. Germany wanted nothing from her neighbor, and had no hostile intentions. Germany was striving for unity, and could not allow this aspiration to be thwarted by the comprehensible jealousy of the other country. The reason for the war is to be found solely in the will of France to prevent the achievement of this unity. German policy, therefore, was privileged, and in duty bound to proceed without any consideration whatever. To what extent and with what intentions this want of consideration was shown, is, as was said before, to

some extent doubtful, but Bismarck played a hazardous game."

The moral law, in so far as it is a law of love, was certainly conspicuous by its utter insignificance as a factor in the whole proceedings. And yet there can be no doubt that history will regard Bismarck's course as statesmanlike in the highest degree.

The story of the famous despatch from Ems, announcing the provisional termination of the negotiations between King William and the French Ambassador, Count Benedetti, and which was "edited" by Bismarck before publication in such a manner as to give the impression that the Ambassador had been snubbed for insolent obtrusiveness, is well known. In its "revised" form the despatch was well calculated to inflame the passions of the French and to arouse a storm of indignant patriotism in Germany, and in this it was eminently successful. In the excited state of public opinion in France it made war inevitable, and this was entirely in accordance with Bismarck's intentions.

The despatch and its "editing" were referred to by Count Caprivi, Bismarck's successor as Imperial Chancellor, in a speech in the Reichstag, November 23, 1892.<sup>1</sup> The count made every effort to excuse the course of his great predecessor, but both Marcks and Prince Bismarck himself, in his memoirs, scorn all palliation of what they proudly avow to have been the discharge of a patriotic duty.

Marcks<sup>2</sup> says: "We now see that, in the highest sense, Bismarck had always been right, even supposing that he had wished for and planned this war from the beginning; in this hour, however, he was right upon every possible hypothesis. What he did on July 13 was an incontestable requirement of his duty as statesman." Bismarck<sup>3</sup> avows having had the conviction at the time, that "War could be avoided only at the expense of Prussia's honor, and of the confidence of the nation in that honor." He graphically describes the delight of

<sup>1</sup> Caprivi, *Reden*, p. 245. <sup>2</sup> L.c., p. 281.

<sup>3</sup> *Gedanken und Erinnerungen*, Vol. II, p. 90.

Moltke and Roon, who were dining with him when the despatch was received, at the prospect of war. At the same time Bismarck himself declines to indorse the doctrine of Ruemelin, that it may be desirable to precipitate a war which seems inevitable,—at a time when the opponent is imperfectly prepared. He says, “I have opposed the opposite theory, not only at the time of the Luxemburg trouble, but also later—for twenty years, as I was convinced that even successful wars can be justified only when they have been forced upon us, and that it is impossible to look at the cards of Providence sufficiently to be warranted in forestalling historical evolution according to private calculations.”

To all of which there is only one answer, viz.: That this is precisely what Count Bismarck did, not only on July 13, 1870, but for nearly two years before. Impartial history, which regards the unification and higher development of his country as his real and superior object, will not fail to take this end into account when the verdict is rendered.

## NOTE B. TREATIES AND PROMISES

Almost the entire subject of International Ethics hinges upon the doctrine of the duty on the part of a state to observe its treaties and promises, and the literature on this duty is most extensive. We have space to quote only a few of the most notable modern utterances, all of which agree substantially with Ruemelin's view, though not always expressing it so clearly and drastically.

John Stuart Mill's extremely able essay on "Treaty Obligations" (*Dissertations and Discussions*, Vol. IV, p. 119), which has been quoted in the introduction to this volume, was written on the occasion of the repudiation, by Russia, of that clause in the Treaty of Paris, of 1856, which guaranteed the neutrality of the Black Sea. It was published in the *Fortnightly Review*, for December, 1870,

and made a profound impression at the time. In it he says: "Through the greater part of the present century the conscience of Europe has been subjected to the demoralizing spectacle of treaties made only to be broken. In 1814 and 1815 a set of treaties were made by the general congress of the states of Europe, which affected to regulate the external and some of the internal concerns of European nations for a time altogether unlimited. These treaties, having been concluded at the termination of a long war which had ended in the signal discomfiture of one side, were imposed by some of the contracting parties, and reluctantly submitted to by others. Their terms were regulated by the interests and relative strength, at the time, of the victors and the vanquished, and were observed as long as this interest and relative strength remained the same; but as fast as any alteration took place in these elements, the powers, one after another, without asking leave of any one, were allowed with impunity to throw off such of the obligations of the treaties as

were distasteful to them, and not sufficiently important to the others to be worth a fight. General opinion sustained some of those violations as being perfectly right, and even those which were disapproved were not regarded as justifying a resort to war. Europe did not intervene when Russia annihilated Poland, when Prussia, Austria, and Russia extinguished the Republic of Cracow, or when the second Bonaparte mounted the throne of France. England alone among the great contracting powers never actively violated this set of treaties, though England too was a party after the fact to one of the most justifiable of the violations,—the separation of Belgium from Holland. Such is the spectacle which Europe has had before her for half a century, and it is well calculated, one would think, to lessen our surprise, when another treaty, made forty years later, fixing certain conditions or affairs of Europe in perpetuity, has in a similar manner broken down.

“If we ask ourselves why this case has aroused more anger in this country than any

of the others had done, the reply, if given with a full remembrance of the previous questions, can scarcely be that it is more shocking to the conscience than any of them, for the annihilation of the Republic of Cracow was not merely an infringement of the treaty, but it was in itself a gross violation of public rights and morality. But it did not touch what we had been taught to fancy our own interests, and was not so liable to be imagined a defiance to us in particular. Not to the greater tenderness of the public conscience, but to the different aspect affronts and injuries wear to the unreflecting, when addressed to ourselves and when addressed to others, must, I fear, be attributed our special perception of the moral value of treaties on this occasion.

“We may fairly be complimented with being so far in advance of some of the other great states of Europe that it is a disputable point whether we have in years infringed any of our treaty obligations, though we must remember that the announcement by one of our leading statesmen, that almost the last treaty that we entered into was only to be

considered as binding by ourselves if adhered to by the others who entered into the same obligation, met with very general approval. Yet the public, if actuated purely by moral feeling, ought to have been more startled by a suggestion of a possible breach of morality on our own part, than by the certainty of an actual breach of it on the part of somebody else. The fact is we have not yet advanced so far as to regard these questions from the purely moral point of view. Our indignation is hot or cold according to circumstances quite foreign to the morality of the case, and it is likely to continue so until the morality of such actions has been placed on a firmer and more clearly defined basis than it has yet received.

“I am ready to join with any one in asserting that this is an evil state of things, most injurious to public morality; and no honest man can see with indifference a condition in which treaties do not bind—in which it rests with the party who deems himself aggrieved by them to say whether they shall be observed or not, in which nations can-

not trust each other's pledged word. It does not follow, however, that this view is likely to be limited by ignoring the fact that there are treaties which never will and even which never ought to be permanently observed by those who have been obliged to submit to them,—far less, therefore, to be permanently enforced.

“It is not necessary to go far back for one of the most flagrant examples which the entire history of mankind offers. Did any person blame Prussia or Austria because in 1813 they violated the treaties which bound them to the first Napoleon, and not only did not fight in his ranks as their engagements required, but brought their whole military forces into the field against him and pursued him to his destruction? Ought they, instead of cancelling the treaties, to have opened negotiations with Napoleon and entreated him to grant them a voluntary release from their obligations? And, if he did not comply with their request to be allowed to desert him, ought they to have faithfully fought in his defence? Yet it was as true of these

treaties as it is of the Treaty of 1856, that, disadvantageous and dishonorable as they may be, they had been submitted to as the purchase money of peace, when the prolongation of war would have been most disastrous; though had the terms been refused Napoleon could with ease have conquered the whole of Prussia and at least the German dominions of Austria, which is considerable more, I presume, than England and France could have done to Russia after the fall of Sebastopol. I seem to hear some ignorant reader crying out, 'Do you pretend that Russia has as complete a justification and even positive obligation to break her treaties as Prussia and Austria then had?' Certainly not. The case of Austria and Prussia was about as extreme a case as in the nature of national affairs could possibly occur. Russia herself could not pretend that her own approaches within a great distance to theirs. But the principle may be the same, and principles are best tested by extreme cases. If a principle will not stand good in every case which it covers, it is proof that

some other principle requires to be considered along with it.

“What means, then, are there of reconciling in the greatest possible degree the inviolability of treaties and the sanctity of national faith with the undoubted fact that treaties are not always to be kept, while yet those who have imposed them upon others weaker than themselves are not likely, if they retain confidence in their own strength, to grant a release from them? To effect this reconciliation as far as it is capable of being affected, nations should be willing to abide by two rules: they should abstain from imposing conditions which upon any just and reasonable view of human affairs cannot be expected to be kept, and they should conclude their treaties as commercial treaties are usually concluded, only for terms of years. . . .”

Mill then discusses the first rule, inquiring what obligations nations are warranted in imposing on one another. He argues that, even as a penalty, extremely harsh conditions should not be imposed for a

longer period than one generation, "so that the people suffering the penalty are no longer as a body the same as those who shared in the evil," but the end in view would be in a still greater degree attained were nations to decline concluding any treaties except for limited periods. A nation cannot rightfully bind itself or others beyond the period to which human foresight can be presumed to extend, thus aggravating the danger, which, to some extent, always exists that the fulfilment of an obligation may, by change of circumstances, become either wrong or unwise.

Mill sees no good reason why engagements reciprocally entered into by nations for their joint advantage should not be subject to periodical renewal, and he instances the Treaty of 1856, which had been concluded as a perpetual compact, and which was repudiated fourteen years later. Had it been concluded for twenty or even twenty-five years it would probably have lasted out the term.

"If these principles are sound, it remains

to be considered how they are to be applied to past treaties, which, though containing stipulations that to be legitimate must be temporary, have been concluded without such limitation, and are afterward violated, or, as by Russia at present, repudiated on the assumption of a right superior to the faith of engagements. It is the misfortune of such stipulations, even if as temporary engagements they might have been justifiable, that, though concluded for permanency, they are seldom to be gotten rid of without some lawless act on the part of the nation bound by them. If a lawless act then has been committed in the present instance, it does not entitle those who impose the conditions to consider the lawlessness only, and to dismiss the more important consideration whether, even if it was wrong to throw off the obligation, it would not be still more wrong to persist in enforcing it. If, though not thought to be perpetual, it has been imposed in perpetuity, the question when it becomes right to throw it off is but a question of time. No time having been

fixed, Russia fixed her own time, and naturally chose the most convenient. She had no reason to believe that the release she sought would be voluntarily granted on any conditions which she would accept; and she chose an opportunity which, if not seized, might have been long before it occurred again, when the other contracting powers were in a more than usually disadvantageous position for going to war. Had this been all, there would have been little in the conduct of Russia but what most other powers in her position would have done, and what there was, at all events, but too many precedents for doing.

“Her special offence is, that in asserting what she might, without being entirely unreasonable and unscrupulous, have believed to be her right, she showed no desire whatever that the wound inflicted upon the confidence so necessary to mankind in the faith of treaties should be the smallest possible. She showed herself perfectly indifferent to any such consequences; she made her claim in a manner calculated to startle mankind,

and to destroy their faith in all treaties which any one of the contracting powers finds it has an interest in shaking off. Not that it is in itself a less immoral act, if a promise is to be broken, to give notice beforehand of the intention, than to keep it hidden and break the engagement without notice, while the other party is relying on its being kept. This is too obvious not to be seen in private life, and this is true of public treaties as it is of private promises. . . . But this misconduct of Russia (misconduct not so much before the bar of history and the best practice of nations, as before that of true morality and of what we may hope will become the future customs) does not entitle her (England) to bring upon millions of innocent persons the unspeakable evils of war, in order to enforce an obligation which it was wrong to impose, and which we ought plainly to declare that we did not desire to reimpose."

At the conference, which met in London in January, 1871, to consider the action of Russia, no serious objection was made to

the abrogation of the clauses which Russia had repudiated. The conference did, however, save appearances, by adopting the following protocol, with which, in turn, Russia cordially concurred:—

“It is an essential part of the law of nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the contracting powers by means of an amicable arrangement.”

This protocol remains binding on the signatory powers: viz., Germany, Austria-Hungary, England, Italy, Russia, and Turkey.<sup>1</sup>

Another notable deliverance on this subject is to be found in Lord Lytton’s rectoral address at the University of Glasgow, November 9, 1888 (see *London Times*, November 10, 1888), in which he discusses the morality appropriate to the conduct of nations as compared with that of individuals in their relation with each other. He says: “We all have heard of the suggestion that conquest is robbery and war murder, a prop-

<sup>1</sup> Calvo, *Droit International*, § 374, Vol. I, p. 505.

osition for which Mr. Lowell asserts that he has not to go beyond his Testament.

“Now, I should like to have further and better particulars as to the text in which Mr. Lowell finds this proposition. A very different proposition, and one which authoritatively contradicts it, is contained in the Thirty-third Article of the Church of England and in the larger catechism of the Church of Scotland. That catechism in its answer to the question, “What are the sins forbidden by the sixth commandment?” excepts the case of public justice, lawful war, and honest defence, and among the proof texts of the proposition it quotes from the forty-eighth chapter of Jeremiah these emphatic words, ‘Cursed be he who keeps back his sword from blood.’ Gentlemen, this unqualified assertion of the wickedness of war rests upon a false analogy which I will presently examine.

“Perhaps, however, the fundamental moral differences between the practice of nations and that of individuals may be best illustrated by an extreme case. We can all conceive

of circumstances under which it may be the clear duty of an individual to sacrifice his life for the good of others, but are any circumstances conceivable in which it would be as clearly the duty of a nation to extinguish its national existence for the benefit of other nations or of humanity at large? To answer this question in the affirmative would be paradoxical; to answer it in the negative is to admit the validity of the distinction between the two cases. Changes may occur in the situation of a nation which of themselves suffice to stultify important parts of international treaties. Let me shortly illustrate this point. The question of the Spanish marriages in the years 1846 and 1847 turned to a great extent upon the terms of the Treaty of Utrecht, and in relation to the altered condition of both France and Spain between the years 1713 and 1846 that was almost as if the patriarchs Shem, Ham, and Japhet had started to divide the earth after the flood in accordance with the title deeds of the persons who were drowned in it. I

have no fear that you will mistake the point of this illustration, but I must guard against misconception. It is not to be inferred from such cases that the permanent obligations of communities are less than those of individuals. They are just as binding and if possible more binding, but they are binding in a different way, and to some extent for different reasons.

“I don’t wish to enter into any abstract ethical inquiry. . . . The whole of our present investigation is confined to the altruistic element of morality, that is to say, the duty of the individual and the nation to other individuals and nations, and therefore the self-regarding virtues fall out of the inquiry.

“Individual Englishmen may lead dissolute lives, but the relations between communities do not involve the duties arising out of those between the sexes. Individual Scotchmen may get drunk, but Scotland cannot. All, then, that we have here to ask, is how then do public and private morality stand to each other in respect to the virtues of justice and benevolence. In speaking of these

virtues it may be said that the spheres of justice and benevolence do not lie wholly outside of each other, and that benevolence includes justice and passes beyond it. But it is certainly not too much to say that in so far as it transcends the dictates of justice and the sphere of definite reciprocal obligations, benevolence becomes essentially a private virtue; and this conclusion is ethically justified by the inherent distinction to which I have already referred, between nations and individuals. Thinking of a nation solely as a simple unit, we must presume that as such, in its relations with other nations of the same kind, it is not only entitled, but bound, to act with greater seeming selfishness than would be permitted to any single individual in the like relations. But look upon nations as what they really are,—aggregations of citizens, holding each other's interests in mutual trust,—and then the moral significance of what is called national selfishness is wholly changed. It ceases to be selfishness in any proper sense of the word. It becomes patriotism, and the rulers of a

nation who would sacrifice its interests to those of other nations would be guilty of a breach of trust, whether the ruling power be one or many, a despotism or a democracy.

“One word more with regard to the question of sanction. Bentham in his *Principles of Legislation* enumerates four sanctions to morality: the natural, or, as he calls it, the physical sanction, the moral sanction, the political sanction, and the religious sanction. The natural sanction means the natural consequence of the action; the moral sanction means the opinion of others and of oneself; the political sanction means law; and the religious sanction means a belief in a Divine government of the world, operating by rewards and punishments.

“Now, how little any of these sanctions applies to nations is sufficiently indicated by the remark of one of our lord chancellors on corporations. ‘A corporation,’ he said, ‘has no body to be kicked, and no soul to be damned.’ And the same is true of nations. Public morals therefore have only one sanction, and that is prudence, or the fear of nation-

ural consequences. If it be said that they have the sanction of war, that is no doubt true, but we must recollect that war is altogether different from the legal or moral sanction. Practically speaking, we may say that there is no sanction of public morals,—that they are a branch of prudence rather than of moral propriety, so called. To this, however, there is one most important qualification. The individual is related not only as a citizen to his fellow-citizens, but also as man to his fellow-men, and therefore, although public morals are not sanctioned as between nation and nation, the conduct of those who guide or take part in guiding them is subject to some of the weightiest sanctions of private morals. Lying, indifference to human suffering, rapacity, cruelty, do not lose their essential character because they are incidental to public actions; but even in the case of these offences we are not, I think, to judge statesmen as we should judge private persons. . . .

“I have now reviewed the various points of comparison and contrast between public and private morals; let me shortly recapitulate

the main conclusion of the survey. First of all, then, the subject of private morals—that is to say, individuals—differs from the subject of public morals—that is to say, nations—so widely that hardly a single proposition applicable to the one can be properly applied to the other. In the next case, of the class of obligations which constitute private morals, only one, namely, justice, has a place in public morals, and the sort of justice which finds its place in public morals is totally different from the justice which relates to individuals. It is far less definite, it cannot be codified, and it consists mainly in moderation and kindly pretence. Now, then, it specially behooves us to bear in mind, when we reflect further, that, except the prudential sanction, not one of the sanctions which to some extent make morals coercive can be applied to nations or smaller communities; but, on the other hand, individuals concerned in the conduct of public affairs are subject to the same moral duties to each other which regulate the conduct of private affairs, although if they neglect such

duties the blame they justly provoke differs in a variety of ways and very considerably from the penalties they would incur by similar conduct in private life."

The late Edward John Phelps, formerly American Minister to England, attempted to reply to this address of Lord Lytton in a speech made before the Phi Beta Kappa Society of Harvard University on June 29, 1889. He claimed that the foreign policy of America "should have for its basis the opposite of the theory set forth by Lord Lytton. It should be founded in the highest morality and justice; it should prefer the right to the expedient, or rather should find in the right what is always in the end the expedient. It should be neither aggressive nor offensive nor hasty, but fair toward others, as well as just toward ourselves, invading no right that we would not ourselves surrender, establishing no precedent that we might afterward wish to evade" (p. 12).

He says, however, on page 9: "That war is sometimes justifiable and even necessary cannot be denied, but in a proper case it

is perfectly consistent with the principles of justice and the requirements of sound morality. A government must take into its own hands not only self-defence, but self-assertion,—the redress as well as the prevention of injuries, because there is not, as in the case of the citizen, a higher common authority to appeal to. Morality would justify the same course by the individual if society was unable to provide a legal remedy for the invasion of civil rights.” And on page 19: “Moral power is an excellent thing. It is best to be right, and in the long run it is necessary to be right, however powerful a nation may be; but there are times when it is of small value to be right if we are likewise impotent. A right arm without brains or conscience is never a desirable force, and brains and conscience without a right arm are not always an effectual one. I would propose, therefore, as one of the first steps toward the international attitude as it seems to me our country should assume, and having assumed should maintain, that a naval force should be created

that should leave us nothing to fear from collision with any other naval power in the world."

William Edward Hall, in his text-book on international law, page 303, gives the following implied conditions under which a treaty is made: First, that it should be observed in its essentials by both parties to it; second, that it shall remain consistent with the rights of self-preservation; third, that the parties to it retain their freedom of will with respect to its subject-matter.

He continues, on page 304: "Beyond the grounds afforded by these three conditions, there is no solid footing upon which the repudiation of treaty obligations can be placed. The other reasons upon which it is alleged that states may refuse to execute contracts into which they have entered, resolve themselves into so many different forms of excuse for disregarding an agreement when it becomes intolerable or onerous in the opinion of the party who wishes to escape from its burden."

This may be regarded as the extreme

view, so far as standard books of international law are concerned. Continental authorities allow a much greater latitude.

Heffter says that a state may repudiate a treaty when it conflicts with the rights and welfare of its people.<sup>1</sup>

Hauteville says that a treaty containing a gratuitous cession or abandonment of an essential natural right, such, for example, as independence, is not obligatory.<sup>2</sup>

Bluntschli thinks that a state may hold treaties incompatible with its development to be *nil*, and he seems to regard the propriety of the denunciation of the Treaty of 1856, by Russia, as an open question.

The doctrine of M. Fiori accepts all the extravagances which are the logical consequence of these views. According to him: "All treaties are to be looked upon as null which are in any way opposed to the development of the further activity of a nation, and which interfere with the exercise of its

<sup>1</sup> Heffter, *Völkerrecht*, p. 98.

<sup>2</sup> Hauteville, *De Droit et devoirs des nations neutres*, Chap. I, Par. 9.

natural rights." By the light of this principle he finds that if the numerous treaties concluded in Europe are examined, they are seen to be immoral and iniquitous.<sup>1</sup>

Hall goes on to say: "Such doctrines as these may be allowed to speak for themselves. Law is not intended to bring license and confusion, but restraint and order, and neither restraint nor order can be imposed by the principles of which expression has just been quoted. Incapable in their weakness of supplying a definite rule, fundamentally immoral by the scope which they give to irregular action, scarcely an act of international bad faith could be so shameless as not to find shelter behind them. High-sounding generalities by which anything may be sanctioned are the favored weapons of unscrupulousness and ambition. They cannot be kept from distorting popular judgment, but they may at least be prevented from affecting the standard of law."

A very thorough and learned discussion on the maxim *Rebus sic stantibus* is to be found

<sup>1</sup> Fiori's *Nouveau Droit International*, Part I, Chap. IV.

in the commentaries of Henricus de Cocceius upon the great work of Hugo Grotius, *De Jure belli ac pacis*.<sup>1</sup>

Cocceius quotes numerous treatises and authorities in favor of the principle that this phrase must be regarded as written into every treaty which by its terms pretends to be perpetual.

For Christian Garve's views, referred to by Ruemelin, see his translation of Cicero's *De Officiis*, to which his treatise<sup>2</sup> on the relation between politics and the moral law is an appendix.<sup>3</sup>

The fact that a promise, solemnly given, is not in international actions necessarily considered an obstacle to contrary action, taken in perfect good faith, and resulting in greater benefit to all concerned, can hardly be illustrated more strikingly than

<sup>1</sup> Edition of 1752, published at Lausanne in five volumes, Vol. II, pp. 85-88.

<sup>2</sup> *Abhandlung über die Verbindung der Moral mit der Politik: Noch einige Betrachtungen über die Frage: "in wie fern ist es möglich, die Moral des Privatlebens bey der Regierung der Staaten zu beobachten?"*

<sup>3</sup> Edition of 1801, Brussels and Leipzig, Vol. III, p. 223.

by the example of England's course in Egypt. The English administration of that country is generally recognized as one of the greatest triumphs of modern civilization, having given to the Egyptians themselves what is undoubtedly the best and perhaps the first honest government in three or four thousand years. Yet the beginning of British occupation was accompanied with definite assurances of early evacuation.

On January 30, 1882, Lord Granville, at the time Foreign Secretary, wrote Lord Lyons that Her Majesty's Government desired to maintain the rights of sovereign and vassal as then established between the Sultan and the Khedive, to secure the fulfilment of international engagements, and to protect the development of institutions within this limit; that they believe that the French government shared these views. The question remained if in Egypt a state of disorder should occur which would be incompatible with this policy, what measure should be taken to meet the difficulty.

“Her Majesty's Government,” wrote Lord

Granville, "have a strong objection to the occupation by themselves of Egypt. It would create opposition in Egypt and in Turkey; it would excite the suspicion and jealousy of other European powers, who would, Her Majesty's Government have reason to believe, make counter demonstrations on their own part which might possibly lead to other serious complications. It would throw upon them the responsibility of governing a country inhabited by Orientals and under other and adverse circumstances. They believe that such an occupation would be as distasteful to the French nation as the sole occupation of Egypt by the French would be to this country. They have carefully considered the question of the joint occupation by England and France, and they have come to the conclusion, although some of the objections above stated might be lessened, others would be very seriously aggravated by such a course.<sup>1</sup>

On May 26, in a debate in the House of Commons, Mr. Gladstone, then Prime

<sup>1</sup> *Annual Register*, 1882, p. 135.

Minister, in speaking of the intervention in Egypt and subsequent occupation, said:—

“The government has acted on the principle that in matters of this kind separate action is generally to be deprecated and avoided, but in the present instance the general considerations which dissuaded them from separate action were infinitely strengthened because the close and intimate relations with France, in which they found themselves in consequence of previous arrangements in Egypt, created a kind of obligation to unite as far as policy on this question was concerned of a highly peculiar character.”<sup>1</sup>

Early in January, 1883, the attitude of the European powers toward England’s occupation of Egypt may be described as one of acquiescence tempered by expectancy.

The announcement of England’s intentions was awaited with some anxiety and suspense, and was speedily relieved by a formal note issued to the great powers by Lord Granville early in January. The note had previously been submitted to and approved

<sup>1</sup> *Annual Register*, 1882, p. 140.

by them, and it must be conceded to Turkey that she did not at any time make any attempt to complicate the existing difficulties in Egypt by interfering in the character of suzerain.

Lord Granville, in his note, pointed out that the course of events had forced upon England the task, which the government would willingly have shared with the other powers, of suppressing the military rebellion in Egypt and restoring peace and order in that country. The work had been accomplished, and although for the present the British forces remained in Egypt, the government were desirous of withdrawing it, as soon as the necessity for its presence was superseded by the organization of a proper force for the maintenance of the Khedive's authority.<sup>1</sup>

These assurances were repeated and reaffirmed on several occasions.

Another instance of the same policy is to be found in the promise made by Prussia in the Treaty of Prague, which closed the war

<sup>1</sup> *Annual Register*, 1883, p. 82.

with Austria in 1866. Article 5 of that treaty provided that—

“If the population of the northern districts of Schleswig make known (*font connaître*) by a free vote their desire to be restored to Denmark, those districts shall be cut off from Schleswig for the purpose of being returned to the Danish state.”<sup>1</sup>

When called upon by the representative of those districts in the North German Parliament to carry out this promise, Bismarck claimed that no one save the Emperor of Austria had the right to make such a demand, and called attention that the article left certain points in doubt, which would therefore be construed in accordance with the interests of the Prussian state.<sup>2</sup>

The provisions of the article were never carried out, and the article itself was, by subsequent agreement with Austria, formally annulled.

<sup>1</sup> Calvo, “*Droit International*,” Vol. I, p. 91.

<sup>2</sup> Speech in the North German Reichstag, March 18, 1867, quoted in Calvo, *l.c.*

## NOTE C. WAR

This is not the occasion for “slaying the slain,” in arguing that war is not always unjustifiable. The following remarks by Mr. Spencer Wilkinson, in his most admirable and interesting work, entitled *War and Policy*, are, however, particularly apposite, and they contain a truth, first announced by General von Clausewitz, the greatest writer on war, which both statesmen and writers on the philosophy of war have often overlooked: “War is political action. It arises from political conditions; it ends in political conditions. The course of the military action is to a great extent determined by the state of things in the political world at the time of its origin, and the political conditions in turn are modified by the military events. Even when armies and fleets are not employed, their existence and the possibility of their use constantly influence the action of governments. They are instruments of statecraft, and their

use cannot be fully understood without an insight into the nature, not only of the instruments, but also of the power by which they are wielded, and of the purposes which they serve.”<sup>1</sup>

When, in November, 1862, General von Roon, Minister of War at Berlin, asked General von Moltke, the chief of staff, whether the eventuality of a war with Denmark had been considered in the chief’s office, the latter replied, “We have constantly kept in view the possibility of a *military solution* of the dispute with Denmark.”<sup>2</sup>

For a theoretical discussion from the religious point of view of the justification of warfare in general, the little pamphlet of Luther, *Can Soldiers be Christians?* is unsurpassed to this day. It has been admirably translated into English by Professor W. H. Carruth, of the University of Kansas, in *The Open Court* for September, 1899 (Vol. XIII, p. 525).

The editor may be permitted to refer to the

<sup>1</sup> Wilkinson, *War and Policy*, p. 3.

<sup>2</sup> *Ibid.*, p. 106.

brief discussion of the same subject in his book on *The Peace Conference at The Hague, and Its Bearings on International Law and Policy*, pp. 360-364, and especially to the passage there quoted from Von Holst's *Constitutional History of the United States* (Lalor's translation), Vol. III, p. 271 ff.





# The Peace Conference at the Hague

## And Its Bearings on International Law and Policy

BY

**FREDERICK W. HOLLS, D.C.L.**

*A Member of the Conference from the United States of America*

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### **COMMENTS**

The chief delegate of one of the great European powers, to the Conference, writes of the book: "It is admirable from every point of view." And he goes on to say: "It could not have been better done," and that all who took part in the Conference owe Mr. Holls a debt of gratitude "for so able, accurate, and impartial a record."

Another says that Mr. Holls has "dealt with the matter in a masterly way." He considers it "quite a good fortune for our conference to have found such an able and competent recorder."

## The Peace Conference—Comments

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Still another says: "Vous avez élevé à nos travaux communes un monument digne d'eux. Et spécialement en ce qui concerne l'œuvre de l'arbitrage après en avoir été l'un des principaux collaborateurs, vous avez tenu à en être aussi l'historien sincère et éloquent."

The *London Times* says:—

"No one was better qualified than Mr. F. W. Holls to be the historian of the Peace Conference at the Hague. He has many qualifications for the task, being known in the United States as a confidential adviser of Mr. McKinley in regard to delicate questions of foreign affairs. He showed, as one of the American delegates at the Hague, rare tact and ability. Reputations were made and unmade there. One of the few who distinctly increased the estimation in which they were held was the author of this volume. Among the few defects in his history of the Peace Conference at the Hague is the fact that it does not make the reader understand the large part which he himself took in the proceedings. . . . But every one ought to be grateful for the clear statement of the course of the discussion and the effect of the conclusions."

The *Review of Reviews* says:—

"Not merely as a jurist, but as a diplomatist, Mr. Holls rendered yeoman's service to the cause, especially by way of removing the prejudices of Germany. His father was a

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German, and German is one of his mother tongues. Hence when Mr. Holls undertakes to write the story of the Peace Conference, he writes it as a man who was on the inside track from the first, and who can say concerning the Commission which framed the Arbitration Convention '*quorum pars magna fui.*' Of this, however, there is little or no mention in the book, and therefore it is the more incumbent upon one who was present and saw how things went, to bear public testimony as to the credentials which Mr. Holls has for producing such a work as this."

EDWARD EVERETT HALE in *The Forum* says:—

"Mr. Holls's closing chapter is of profound interest and importance. In twenty pages, quite too few, he states 'the bearings of the Conference upon International Law and Policy.' . . . This masterly chapter should be studied not only in schools of law, but in all schools of the higher education. For we must all take care that the generation which created the Hague Conference shall comprehend its purpose, and know what are its achievements. Mr. Holls truly says that it is most encouraging that on the continent of Europe the governments are in advance of public opinion on the entire subject. In this country we must all see to it that public opinion shall be thoroughly informed as to what has been done, and as to what is still possible. For such a purpose we are already largely indebted to the distinguished members of the Conference, making their reports each in his

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own way. This country and the world are very greatly indebted to Mr. Holls for the admirable narrative which we have severely condensed, which is destined to take an important place in the written history of the civilized world."

The *Athenaeum* says:—

“The book is invaluable to students of International Law and publicists generally.”

The *Sun*, New York, says:—

“There is no one better qualified to give us an account of the proceedings and the outcome of The Peace Conference at The Hague than Mr. Frederick W. Holls.”

Dr. NEWTON C. DOUGHERTY in *The Peoria Journal*:—

“The book itself is a plain, practical, and complete digest of the work of the peace conference. It is an international summary reduced to the simplest possible terms. It is a text-book of the recognized peace economy of the world. As an explanation of what the nations did and left for succeeding governmental generations to do in furthering the divine cause of universal good will, it is invaluable to thoughtful American readers. It may fairly be so considered for two reasons: First, because it sheds a flood of explanatory light on a vital but much misunderstood congress of nations; second, because it dispels at once and forever the disagree-

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able illusion that American diplomats are crude, impolitic, or in any sense inferior to the courtly representatives of European governments.”

The *Church Review*, London, says:—

“A most interesting and instructive volume, indispensable to the student of international law, most important to the politician, and attractive and informing to that general reader for whom the distinguished author has also provided.”

Prof. T. S. WOOLSEY, in the *Yale Review*, says:—

“Fair and unbiassed, and in the highest degree interesting. He makes clear some matters which have been commonly misunderstood.”

The *Independent* says:—

“The subject of this book, therefore, was large and interesting, and worthy of dignified and able treatment, and it has received it from Mr. Holls. His knowledge of the subject is full and accurate, and his style clear and strong. The conviction grows as one reads the book of the high character and purpose of the members of the Conference. . . . An admirable treatment of a large and interesting subject.”

FRANKLIN H. HEAD says in the *Dial*:—

“Dr. Holls's volume will be a necessity to all who would keep in touch with one of the loftiest achievements since the

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meeting of the Barons with King John, and an achievement which, it is hoped, through its High Arbitration Tribunal, may be a factor in the settlement of the 'tremendous problem in the Far East which is darkening the horizon of all commercial nations.'"

The *New York Law Journal* says:—

"Mr. Holls has solved the problem of telling what took place, 'with sufficient fulness for the student of international law,' without making it 'too technical for the general reader.' The narrative of official procedure, of social functions, and even of occasional humorous features, is graphic and genial in style. An exegetical and critical commentary is furnished, section by section, upon each of the Conventions and Declarations signed by the plenipotentiaries. It is explained where and how a given provision originated, and how and why it was modified. Opposing arguments and points of view are clearly and fairly stated. . . . For the future historian and the diplomat engaged upon a specific question, the present work will serve as a guide to sources of fuller information; for the general student it will probably prove a permanently adequate manual of its subject."

FREDERICK STARR, in *Unity*, says:—

" . . . he gives us an interesting history of that famous meeting — the story of its calling, its membership, the work done in the three committees, the discussion upon the

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proposition by the United States regarding private property on the high seas, the conference from day to day. In a final chapter he presents the bearings of the conference upon International Law and Policy. After this matter, which is most attractively and popularly presented, he gives, in appendices, the full text of the final act, treaties, and declarations adopted by the conference, the official report of the American Commission and a description of the Hugo Grotius celebration at Delft on July 4, 1899. Mr. Holls's book is interesting and highly important. No student of international questions — and to-day every intelligent American should be such — can afford to be without it."

*The Lutheran* says: —

"The accuracy and ability with which Mr. Holls in this volume has preserved a clear and progressive record of the work of the committee, together with a history of the meetings of the Conference, and an excellent delineation of the important speeches and reports that appeared during the course of the deliberations of the various committees and sub-committees, rendering the book sufficiently full and accurate as a basis of technical study on questions of International Law, and at the same time preserving the thread of interest for the general reader, is deserving of the highest praise. The ability to deal with large questions that abound in fulness of intricate detail, and to dispose of them in such manner that they bring cumulative information to the reader,

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instead of confusion and perplexity, is apparent throughout in the treatment adopted."

The *Outlook* says:—

"This is a book of reference which the student of International Law must put in the first rank. Mr. Holls writes so interestingly, however, that the book is not too technical for the general reader. Since the beginning of the Boer war much has been said pessimistically about the results of the Peace Conference at The Hague. It is now well to emphasize what the Conference did accomplish—in the codification of the laws of war, in the building up of the body of international law, above all, in the binding together of the nations into a federation for justice. The establishment of a permanent international court of arbitration is the great monument which will commemorate the Hague Conference. It will dissipate many prevalent misconceptions. After narrating the history of the Conference and describing its work, Mr. Holls sums up the bearing upon International Law and Policy, showing that the treaty which pacifically adjusts so many international differences may really be called the Magna Charta of International Law. As with the Magna Charta of England, so the significance of the Hague Conference lies not so much in what it contains as in what it signifies."



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